IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Date of decision: 16.10.2006

Criminal Appeal No. 376 of 2001
(Old No. 2797 of 1999)

1. Ghur Began alias Raj Kumar
   S/o Sukhani Deen
2. Parmanand
   S/o Kanai Bhagat Jatav
   Both R/o Anadpur cutting Kichha
   P.S. Kichha
   District Udham Singh Nagar ……Appellants

Versus

State …….Respondent.

Shri B.P.S. Mer, learned Amicus Curiae for the appellant No. 1.
Shri Vivek Shukla, Advocate and Shri Kailash Joshi, Advocate, learned counsel for the appellant No. 2.
Shri Rajeev Mohan Birkhni, learned A.G.A. for the State.

A.F.R. (Approved for Reporting)
Not approved for Reporting

(Initial of Judge)

Date: 16.10.2006

Note: Bench Reader will attach this at the top of the first page of the judgment with it is put up before the Judge for signature.

Judgment Reserved

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Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 374 (2) of Code of Criminal Procedure, 1973 (for brevity herein after referred as Cr.P.C.), is directed against the judgment and order dated 04.11.1999, passed by learned Special Judge (E.S. Act)/Additional Sessions Judge, Nainital, in Session Trial No. 310 of 1995 and Sessions Trial No. 306 of 1995, whereby appellant Ghur Began alias Raj Kumar, has been convicted under Section 307 of Indian Penal Code, 1860 (for brevity herein after referred as I.P.C.), and appellant Paramanand is convicted under Section 307 read with Section 34 I.P.C. and each one of them is sentenced to undergo rigorous imprisonment for five years and also to pay fine of Rs. 2,000/- in default of payment of which the defaulter is directed to undergo simple imprisonment for two months.

2. Heard learned counsel for the parties and perused the record.

3. Prosecution story, in brief, is that on 07.08.1993, at about 8:00 P.M., complainant's son Tej Narayan (P.W. 2), had a quarrel with appellant Ghur Began alias Raj Kumar. The said incident, took place in village Anandpur within the limits of Police station Kichha, District Udham Singh Nagar, When the quarrel aggravated, appellant Ghur Began alias Raj Kumar, gave a blow of knife on the neck of Tej Narayan. While said appellant was giving blow, appellant Parmanand, caught hold of Tej Narayan so that appellant Ghur Began alias Raj Kumar may strike the blow. P.W. 1 Lal Mohar (informant), father of the injured, came out o f his house on hearing the alarm, and simultaneously P.W. 3 Ram Narayan, P.W. 4 Ram Bahadur, P.W. 5 Bhudev Saraswat, neighbours, reached there and witnesses that accused persons fleeing from the scene of occurrence after commission of crime. P.W. 1 Lal Mohar, took the injured immediately to hospital and lodged First Information Report (Ext. A-1) with the police at 10:50 P.M. in that very night. P.W. 7 Jwala Prasad Sub Inspector, investigated the crime. P.W. 8 Dr. J.S. Pangati, examined the injuries on the person of Tej Narayan in the hospital. On completion of the investigation, a charge sheet (Ext. A-11) was submitted by Investigating Officer against Parmanand and later on another charge sheet (Ext. A-5) against

appellant Ghur Began alias Raj Kumar (as he was absconder earlier).

4. On receipt of the charge sheet, it appears that the Magistrate concerned, after giving necessary copies to the accused, as required under Section 207 of Cr.P.C., committed the case for trial, to the Court of Sessions Judge. After hearing the prosecution and the defence, learned Sessions Judge, framed charge of offence punishable under Section 307 I.P.C. against the accused Ghur Began alias Raj Kumar and that of offence punishable under Section 307/34 I.P.C. against accused Parmanand. Both the accused, pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1 Lal Mohar (informant), P.W. 2 Tej Narayan P.W. 3 Ram Naryan (hostile), P.W. 4 Ram Bahadur (hostile), P.W. 5 Mahabir (hostile), P.W. 6 Sub-Inspector Bhudev Saraswat, who initially investigated the crime, P.W. 7 Sub-Inspector Jwala Prasad, completed the investigation and P.W. 8 Dr. J.S. Pangti, who examined the injuries on the person of the injured. The entire oral and documentary evidence was put the accused persons under Section 313 Cr.P.C. in reply to which they alleged the same to be false. The trial court, after hearing the parties, found appellant Ghur Began alias Raj Kumar, guilty of offence punishable under Section 307 I.P.C. and appellant Parmanand guilty of offence punishable under Section 307/34 I.P.C. and after hearing on sentence, sentenced each one of the convicts to rigorous imprisonment for a period of five years and also to pay fine of Rs. 2,000/- in default

of payment of which the defaulter was directed to undergo simple imprisonment for two months. Aggrieved by said judgment and order dated 04.11.1999, this appeal was preferred before Allahabad High Court in the year 1999, from where it has been received by transfer to this Court, under Section 35 of U.P. Reorganisation Act, 2000, for its disposal.

5. Before further discussions, it is pertinent to mention here the injuries found on the person of injured Tej Narayan on the date of the incident, as recorded in Ext. A-12 by P.W. 8 Dr. J.S. Pangti. The injuries recorded, are as under:-

1. Incised wound curved 15cm X 2cm over front of neck, underline muscle, vein, cut trachea, air coming through wound, between chain and Momubru bone, profuse bleeding present from the wound.

2. Incised wound 2cm X ½ cm X muscle deep between index and thumb of left hand, profuse bleeding from wound, third vessel also cut under the wound.

3. Abrasion 1cm X ½ cm over little finger of right hand, bleeding from wound present.

6. P.W. 1 Lal Mohar, informant has stated on oath that injured Tej Narayan is his son, who has enmity with the accused/appellant Paramanand. The witness

states that on the date of incident, at about 8:00 P.M. appellants Parmanand and Ghur Began, caused knife injury on the neck of his son Tej Narayan. This witness has further stated that he lodged First Information Report (Ext. A-1). In the cross examination, the witness states that he reached at the spot on hearing alarm of some boys that knife blow has been struck on his son. This witness admits in the cross examination that by the time he reached the place of occurrence, the accused persons had fled from the scene.

7. P.W. 2 The Narayan is the star witness of this case. This witness has stated that on the date of incident, about 8:00 P.M., the accused Paramanand called him from his house and when he came out on the pathway, appellant Paramanand, caught hold of him and appellant Ghur Began, struck a blow with knife on his neck. This witness has further stated that his father and other took him first to Police Station and then to the hospital. The statement of this witness gets corroboration from the injury report, quoted above.

8. P.W. 3 Ram Narayan, states that Tej Narayan (injured), after getting the injuries told him that appellant Paramanand, caught hold of him and appellant Raj Kumar (Ghur Began), gave a knife blow on his person. This witness has further stated that he along with others, took the injured to the hospital but this witness clearly states that he himself did not see appellants, committing the crime, as he was declared hostile, However, the witness has

corroborated that the incident had taken place at the time and place, narrated by P.W. 2 Tej Narayan. P.W. 4 Ram Bahadur and P.W. 5 Mahavir, have stated that they did not see the appellants, causing injuries to Tej Narayan and these two witnesses were also declared hostile.

9. The First Information Report was lodged in this case is a prompt one. Injuries, found on the person of the injured on the very day couple of hours after the incident, fully corroborate the incident, as narrated by P.W. 2 Tej Narayan (injured). His sole testimony itself in view of the prompt First Information Report and corroboration from the medical injury report does not create any doubt in his statement that the injuries were caused by the appellants in the manner, narrated by him.

10. Learned counsel for the appellants, argued that First Information Report (Ext. A-1) is said to have been lodged at 10:50 P.M. and in that report it is mentioned that Tej Narayan, has been admitted in the hospital. But the injury report (Ext. A-12), discloses that the injuries were examined at about mid night in the hospital, as such the First Information Report is ante time. In the opinion of this Court, the above fact do not create any reasonable doubt in the prosecution story for the reason that P.W. 1 Lal Mohra and P.W. 2 Tej Narayan, themselves have stated that the injured was first taken to the police station and from there to the hospital. It appears that considering the condition of

the injured, the police asked the informant to take the injured immediately to the hospital and on his return back from the hospital, the informant lodged the First Information Report. As such, the time shown in the First Information Report is the time when the informant and the injured earlier passed through the police station and informant told orally about the incident. This fact is clear after reading whole of the statements of the witnesses- P.W. 1 Lal Mohar and P.W. 2 Tej Narayan. P.W. 8 Dr. J.S. Pangti, has stated that the injury was so serious, that is could have resulted in the death of the injured.

11. The next contention, advanced on behalf of the appellants is that no source of light is disclosed in the prosecution story as such it should not be believed. Had the accused persons not known to the injured, this contention could have been accepted by this Court. But both the appellants were known to the injured. It is categorically stated that appellant Paramanand called injured Tej Narayan from the house and when the injured reached on the pathway he was given blow of knife by appellant Ghur Began alias Raj Kumar after Paramanand, caught hold his hand. It has come on the record that there was moonlight on the date of the incident. When the parties were known to each other, there was nothing unnatural in identifying them even in the moonlight night. As such, the prosecution story does not appear to be doubtful on that ground.

12. Lastly, it is submitted that the appellants are innocent and they have been falsely implicated in the crime and due to enmity. I am unable to accept this submission for the reason that the injured and his father would never like to spare the actual culprit and implicate the innocent persons in such a case. Since the First Information Report is a prompt one and medical injuries received by Tej Narayan, indicate that he could have died, as such, it cannot be said that the appellants were falsely implicated due to enmity, rather it indicates that due to enmity, the appellants have committed attempt to commit murder of the injured, with common intention.

13. For the reasons, as discussed above, this Court finds no error of law or that of fact, committed by the trial court in convicting and sentencing the appellants, under Section 307 and under Section 307/34 I.P.C. The appeal is liable to be dismissed. The same is dismissed. The conviction and sentence, recorded by the trial court is upheld. The appellant No. 2 Paramanand is on bail. His bail is cancelled. The trial court shall take him into custody to make him to serve out the sentence. And as against appellant No. 1 – Ghur Began alias Raj Kumar, the trial court shall see that he also serves out the sentence, awarded against him.

Dt. 16.10.2006 **(Prafulla C. Pant, J.)**
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